

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC. APEAL NO. 188 OF 2013**

*(Arising from HCCS No. 1028 of 2001)*

**IN THE MATTER OF THE ADVOCATES ACT CAP 267**

**AND**

**IN THE MATTER OF THE ADVOCATES (TAXATION OF COSTS)  
(APPEALS & REFERENCES) REGULATIONS SI 267-5**

**AND**

**IN THE MATTER OF A TAXATION APPEAL**

**MANHARLAL THAKKAR ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**1. BAHATI MARK**

**2. KIBUNGO ENTERPRISES ::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON JUSTICE STEPHEN MUSOTA**

**RULING**

This is a reference in form of an appeal in taxation from the orders of the learned Deputy Registrar brought by way of Chamber Summons, S. 62 of the Advocates Act, Regulation 3 (Taxation of costs) (Appeal & References) Regulations SI 267-5 and S. 98 of the Civil Procedure Act Cap 71. The appellants seek for orders that :-

- (i) The taxing officer's taxation ruling and certificate in Civil Suit No. 1028 of 2001 be set aside.
- (ii) Costs of the application be provided for.

The Chamber Summons is supported by grounds of facts contained in the affidavit of Dinah Mukasa which briefly are that:-

- (a) The learned taxing officer erred in law and principle in allowing instruction fee as UGX 5.000.000= (Five Million only).
- (b) The taxing officer erred in law and principle in taxing off fees for counsel's attendance.
- (c) The Bill of costs in all circumstances of the case is manifestly inadequate as to ipso facto infer misdirection on principles of law.
- (d) It is just and equitable that the learned taxing officer's taxation decision be set aside.

The background to the taxation is that Manharlal Thakkar sued two defendants to wit; (1) Bahati Mark and (2) Kibungo Enterprises limited for

- (a) Special damages categorized as follows:
  - (i) UGX - 7.901.740=
  - (ii) US\$ - 7,897.66
  - (iii) Kenya Shs - 411,080=
  - (iv) Indian Rupees 1,097,763.00
  - (v) South Africa Rands - 204,698.39
- (b) Interest on special damages at commercial rate from the date of filing till payment in full.

- (c) General damages.
- (d) Interest upon general damages at court rate from date to judgment till payment in full, and
- (e) Costs of the suit.

At the end of it all, judgment was entered for the plaintiff against both defendants jointly with orders that the defendants pay the plaintiff special damages in the following sums:-

- 1. UGX - 7.901.740=
- 2. US\$ - 7,897.66
- 3. Kenya Shs - 411,080=
- 4. Indian Rupees - 1,097,763.00
- 5. South Africa Rands - 204,698.39
- 6. Shs 45.000.000 as general damages
- 7. Interest on both (a) and (b) above at 8% per annum and in case of (a) from the date of filing to the date of payment in full and in case of (b) from the date of judgment to the date of payment in full, and;
- 8. Costs of the suit to the plaintiff.

A bill of costs claiming inter alia shs 35.000.000= instruction fees was filed for taxation and attendance on diverse days of shs 100.000= per day. The grand total of the bill was 47.853.807=.

In his taxation ruling, the Registrar awarded shs 5.000.000= as instruction fee and taxed “the rest of the items in accordance with the Rules” and allowed the bill at shs 10.104.650= overall hence this appeal.

In his submissions Mr. Musiime for the appellant submitted that

- (1) The taxing officer does not give the value of the subject matter yet the Decree is in terms of foreign currencies. That no rate of conversion is stated in the Ruling.
- (2) The taxing officer stated that he used the formula in the 6<sup>th</sup> schedule but does not disclose it. According to Mr. Musiime such formula does not exist.
- (3) Taxation is not mathematical but something which should be done through opinion and experience.
- (4) The general consideration in remunerating an advocate should be aimed at attracting recruits to the profession.
- (5) This case has been in the court system since 2001 and counsel attended 25 times. He enlisted 2 expert witnesses and records from four hospitals from Kenya, Uganda, South Africa etc. An award of 5.000.000= was an under payment given that the subject matter was of the value of over 200m=. That a higher fee ought to have been given.
- (6) That awards in taxation should be consistent so that lawyers are able to advise their clients of what to expect.
- (7) Court have allowed 8% or 9% or 10% of the value of the subject matter which has been consistently followed but the

Taxing Master ignored this in this case. Learned counsel prayed that he be awarded 10% of the value of the suit.

On Ground 2 Mr. Musiime submitted that it was wrong for the Registrar to tax off figures which are set out in the rules such as in item 37 in which he taxed off 70,000= from 100.000=. That he had no discretion to do this.

On Ground 3, Mr. Musiime submitted that from the circumstances of the case and the value of the subject matter where evidence was adduced and given the effort put in by learned counsel, an award of shs 5m shows a misdirection. That the same be set aside and 10% of the decree be awarded. He prayed that the certificate be set aside with costs.

In reply, Mr. Akampumuza learned counsel for the defendant submitted that on appeal, counsel for the appellant had to prove that;

- a) There was an error.
- b) The taxing master did not exercise his discretion judiciously.

That Mr. Musiime failed to prove this. That the amount claimed in the bill was approximately 200m. That going by the 6<sup>th</sup> schedule, the appellant would not be entitled to more than shs 3,212,106=.

That the Registrar followed the Decree when calculating instruction fee. That he did not err in law or in principle and court should not interfere with the Registrar's discretion unless it was not judicious.

That the award of attendance fees is mathematical and is within the discretion of the taxing master. That this appeal lacks merit and should be dismissed.

In rejoinder, Mr. Musiime argued that where a scale is provided one cannot use a formula and where there is a formula one cannot use discretion.

I have carefully studied and considered the Chamber Summons and its supporting affidavit. I have related the same to the record of taxation and the submissions by respective counsel. The principles of determining appeals in matters of taxation of costs are well settled in a number of decided cases some of which were quoted by respective counsel for my assistance. These cases include:-

- **Premchand Raichand Lts & anor Vs Quarry Services of East Africa Ltd & ors No. 3 [1972] EA 162**
- **In the matter of Alexander AND in the matter of M/s Kayondo & Co. Advocates SCCA 1 of 1997**
- **Uganda Revenue Authority Vs Rock Petroleum Ltd HCCS 0707 of 2012**

- **National Insurance Corporation Vs Pelican Services Ltd**  
**Civil Ref. No. 13 of 2005 (CA).**

While taxing a bill of costs, the taxing master must consider the following principles:-

- (a) Costs should not be allowed to rise to such a level as to confine access to courts to the wealthy;
- (b) The successful litigant ought to be fairly reimbursed for the costs he had to incur;
- (c) The general level of remuneration of advocates must be such as to attract recruits to the profession and;
- (d) That so far as practicable there should be consistency in the awards made.

While considering an appeal in taxation, the general principle is that court will only interfere when the award if the taxing officer is so high or so low as to amount to an injury to one party. Usually in comparable cases an allowance may be made for the fall in the value of the money.

Instruction fees should be based in the amount of work involved in preparing for the hearing, the difficulty and importance of the case and the amount involved. These factors apply to the respondents as well as the appellant. Remember that the advocate for the appellant does have the responsibility of advising his client after judgment, to attack

the judgment of the court which justifies being allowed a slightly higher fee to include this element.

Applying the above principles to the instant appeal, I am inclined to agree with the attacks Mr. Musiime meted out to the decision of the learned Taxing Master. His ruling does not expressly reveal the basis of his decision to award shs 5.000.000= as instruction fees. He simply states that:

***“On instruction fees I will calculate it on the value that can be ascertained from the decree and using the formula in the 6<sup>th</sup> schedule of the Advocates (Remuneration and Taxation of costs) Regulations my calculation shows that what counsel for the Defendant suggests as value is nearest to what I have calculated to be which is less. I will however take that value to determine the instruction fee.....”***

There is no formula cited. The Registrar’s calculation is not disclosed. It is not clear which value was used to determine the instruction fee. As rightly submitted by Mr. Musiime, apart from item 1 of the award, the rest of the awards are in foreign currency. There was no attempt to translate the said awards in terms of the local currency upon which the Advocates Remuneration and Taxation of costs rules were enacted. This would give an appropriate value of the subject matter, upon which, using the principles of taxation I have enumerated above the taxing master would have based himself on to calculate and determine



the proper instruction fee. This was an error on the part of the taxing master and this court is enjoined to intervene using the principle of consistency.

I will also have in mind fairness, the need to preserve accessibility to courts by all regardless of their standing in society and the need to attract recruits into the profession.

After converting the figures in foreign currency into UGX on 29.08.2013 for ease of application of the Rules, I have come up with the value of the subject matter as being:

	UGX
1. US\$ 7897.66 -	20.423.348.76=
2. Kshs 411080 -	12.085.752=
3. INR 1,097,763 -	41.909.846.93=
4. R 204,698.39 -	51.111.595.62=

If you add special damages of shs 7.901.740= and general damages of shs 45.000.000= and interest on the award, the value of the subject matter would be in the range of shs 200.000.000=. This is the value on which the learned registrar ought to have based his determination of the instruction fee coupled with the other considerations outlined in this ruling.

Therefore considering that this case has been in the system since 2001, the complexity of its prosecution and attendance of 25 times where 2 expert witnesses were enlisted and a lot of research was done, an award of an instruction fee of 5.000.000= was on the lower side.

Secondly a consistent award of between 8% - 10% of the value of the subject matter as instruction fee should have been considered. In Constitutional Ref. No. 1 of 2009 in the Supreme Court an award of shs 50.000.000= as instruction fee was reduced to 15.000.000=. In the Supreme Court case of **Joseph Tumushabe Vs Attorney General Reference No. 3 of 2009** it was ruled that an award of shs 15m= instruction fee was adequate.

In **NIC Vs Pelican Services Ltd Civil Ref 13 of 2005** an award of 10% of the value of the subject matter of 75.000.000= was considered and shs 7.5m= was allowed reducing in from 13m= which was about 18-20% of 75.000.000=.

In the instant case therefore where the subject matter is in the range of 200.000.000= I will adjust the instruction fee upwards and award 8% of the subject matter. The award of shs 5.000.000= is set aside and substituted with an award of shs 16.000.000= instruction fee.

Regarding the attendance fee Mr. Musiime faulted the Taxing Master for taxing the attendance fee from 100.000= to 50.000=. On this item I will not fault the Taxing Master because it was not proved that on each attendance, learned counsel for the plaintiff spent 2 hours in court.

To the extent outlined above, this appeal on reference is allowed. No order as to costs. Each party to meet its costs.

**Stephen Musota**

**J U D G E**

**16.09.2013**